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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

11 GARY TANNER,

12 Petitioner,

13 v.

14 KENNETH QUINN,

15 Respondent.

Case No. C08-5233RBL/JKA

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
November 14, 2008**

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19 This habeas corpus action, filed pursuant to 28 U. S.C. 2254, has been referred to the  
20 undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and  
21 Local Magistrates' Rules MJR 3 and MJR 4.

22 Petitioner filed a thirty-three page proposed petition with an incomplete application to  
23 proceed *in forma pauperis* (Dkt. # 1). In April of 2008, the Clerk's office informed him that they  
24 needed copies of the petition for service. (Dkt # 2). Petitioner was given until May 26, 2008, to  
25 provide service copies. Her did not comply with the Clerk's office request. The undersigned then  
26 recommended the petition to proceed *in forma pauperis* be denied because petitioner had funds.  
27 That Report and Recommendation was adopted (Dkt. # 8). Petitioner was given until July 28, 2008,  
28 to pay the filing fee.

1 Although the petitioner was over one month late, on September 2, 2008, he paid the filing  
2 fee. The case was again referred to the undersigned.

3 On September 15, 2008, the court ordered plaintiff to provide service copies of his petition  
4 (Dkt # 10). The court gave petitioner until October 17, 2008, to provide the copies and informed  
5 him a Report and Recommendation to dismiss the action would be filed if the copies were not  
6 received.

7 Petitioner has not complied with the court's order and instead filed motions. The first motion  
8 is titled "A copies of states motions and what this is my criminal case or what? Ask for counsel."  
9 (Dkt. # 11). The sum total of the motion states "Could a copies of states brief and let me know  
10 whats [sic] going on I take lots of medication and its hard to remember, things. Please take under  
11 consideration counsel attorney. Thank you for consideration." (Dkt. # 11). Petitioner's other  
12 motion asks for a 60 day extension of time to file an "informal brief." (Dkt. # 12).

13 Those motions have been denied by separate order and the court now recommends this action  
14 be dismissed for failure to prosecute. Plaintiff was informed the court needed service copies of his  
15 petition as early as April of 2008. In six months petitioner has failed to comply with the Clerk's  
16 office request. Further, in September of this year petitioner was ordered to provide service copies.  
17 He has not complied.

18 The court now recommends this action be **DISMISSED WITHOUT PREJUDICE** for  
19 failure to comply with a court order and for failure to prosecute the action. Pursuant to 28 U.S.C. §  
20 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days  
21 from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file  
22 objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474  
23 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set  
24 the matter for consideration on November 14, 2008, as noted in the caption.

25 DATED this 28 day of October, 2008.

26  
27 /S/ J. Kelley Arnold  
28 J. Kelley Arnold  
United States Magistrate Judge